
(1998) 09 MAD CK 0035
In the Madras High Court

S. Sonaiah

APPELLANT

Vs

The Registrar, High Court and Others

RESPONDENT

Date of Decision : 18-09-1998

Acts Referred:

Citation : (1998) 3 MLJ 698

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Judgement

Shivaraj Patil, J.—Heard the learned Counsel for the petitioner.

2. In this writ petition, the petitioner sought for writ of mandamus, directing the first respondent the Registrar, of this High Court to forward the

petitioner's application dated 28.7.1998 with enclosures which is returned to the petitioner by the letter R.O.C.No. 4962/A/98/C3, dated

13.8.1998 to the Tamil Nadu Public Service Commission, Chennai.

3. The petitioner was practising as an Advocate for 9 years from 30.11.1988 to 21.3.1998 at Madurai. He was selected for the post of Examiner

and he is working as such from 25.3.1998 in the Judicial Magistrate's Court at Periyakulam. In response to the notification issued by the Tamil

Nadu Public Service Commission, inviting applications in the recruitment to the post of Civil Judges (Junior Division), the petitioner submitted

application through the proper channel. The 1st respondent did not forward the application and on the other hand, returned the same, stating that

the petitioner was not a practising advocate on 2.7.1998, the date on which the notification was issued by the Tamil Nadu Public Service

Commission. Hence the petitioner has filed this writ petition for the relief as stated above.

4. The learned Counsel for the petitioner based on the instructions issued by the Tamil Nadu Public Service Commission to candidates in particular

inviting our attention to paragraph 3 (d), submitted that for the purpose of Clause (d), a person will be deemed to be not in the service of the Indian

Union or of a State in India, paragraph 3 (d) aforementioned reads as below:

3. A candidate must satisfy the commission - (a)... (b)... (c)...

(d) that, on the date of notification advertisement for the purpose of directed recruitment he was not in the service of the Indian Union or of a State

in India.

Note:- For the purpose of this clause a person will be deemed to be not in the service of the Indian Union or of a State in India

(i) If a period of five years has not elapsed since his first appointment to service of the Indian Union or of a State in India, or

(ii) if he belongs to one of the scheduled Castes or scheduled Tribes or to one of the Backward Classes.

Thus, according to the learned Counsel in case of the candidates belonging to Scheduled Caste and Scheduled Tribes, there is an exception. In

that event, though the petitioner is in service, he should be deemed to be not in service and his application should be accepted.

5. We had occasion to consider the requirement of being a practising advocate on the date of the application yesterday (17.9.1998) in W.P.No.

14431 of 1998 and we disposed of the said writ petition, dismissing it referring to Rule 5 of Tamil Nadu State Judicial Service (Cadre and

Recruitment) Rules, 1995. For the very reasons stated in our order passed yesterday in the aforementioned writ petition, it is not possible for us to

accept the contention of the learned Counsel for the petitioner that even though the petitioner is in service, his application should be accepted. The

requirement of Rule 5 is that a candidate seeking to apply for the post of Civil Judge (Junior Division), must be a practising advocate on the date of

the notification, i.e., 2.7.1998 in the instant case. The positive requirement is that the candidate must be a practising advocate on the date of the

notification, whether that candidate is in service or not. But a candidate, who is in service on the date of the notification cannot be considered to be

a practising advocate. The interpretation sought to be placed by the learned Counsel, if accepted, it contradicts the very Rule. Hence it is not

possible for us to agree with the learned Counsel for the petitioner. In this view, the writ petition is rejected at the stage of admission.

Consequently, W.M.P.No. 22003 of 1998 is dismissed.